

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

BARRY S. MILLER, ESQ.  
1211 Liberty Avenue  
Hillside, New Jersey 07205  
973-216-7030  
973-710-3099 (Fax)  
bmiller@barrysmilleresq.com  
Attorney for Debtor

In Re:

**HANY ELAZAB**

Debtor.

Case No.: 16-32037

Chapter 11

Hearing Date: 9/25/18 at 10AM

Judge: John K. Sherwood

**SUPPLEMENTAL CERTIFICATION OF BARRY S. MILLER, ESQ. IN LIMITED  
OPPOSITION TO FAY SERVICING LLC's MOTION TO VACATE AUTOMATIC  
STAY**

Barry S. Miller, of full age, in his capacity as attorney for Hany Elazab, the Debtor  
(hereinafter referred to as "Debtor"), hereby certifies to the following information:

1. I am an attorney at law in the State of New Jersey. I submit this supplemental certification in limited opposition to Fay Servicing's motion to vacate stay.
2. Following the filing of my original certification on August 7, 2018 (Doc. #89), I received a seven page fax on August 24, 2018 from Joseph Bean, Jr., Fay Servicing LLC's Bankruptcy Account Manager, in which Fay Servicing has offered my client a *Trial Period Plan under the Fay Servicing Modification Program (Exhibit A)*.

3. I had since forwarded that paperwork to my client and we had a recent discussion about whether he wanted to accept Fay's Servicing's offer. My client wants to speak directly with Mr. Bean, who had contacted my office on September 13, 2018 inquiring about my client's intentions. With my client on the phone yesterday, we tried to reach Mr. Bean but had to leave a message.
4. My client's deadline to make his first payment, should he accept the Fay Servicing loan modification offer, is October 1, 2018.
5. Unfortunately, due to the fact that the adjourned hearing date of Fay Servicing's motion is on the Jewish holiday of Sukkot that I observe, I will not be able to attend the hearing on September 25th. I will, however, request that counsel for Fay Servicing agree to a brief adjournment until at least after the October 1, 2018 payment deadline. I will also be observing the last two days of the eight-day Sukkot holiday so I will not be available to appear in court on October 1, 2018 or October 2, 2018.
6. For the above reasons, it is respectfully requested that the court deny Fay Servicing, LLC the relief that it is seeking at least until all efforts at loss mitigation have been exhausted.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are false, I am subject to punishment.

By: /s/Barry S. Miller  
Barry S. Miller, Esq.  
Attorney for Debtor

Dated: September 18, 2018

## **EXHIBIT A**

## Fax Transmission

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**Attention to:**

**Name:** 19737103099  
**Company:**  
**Date:** 08/24/2018  
**Time:** 10:27:53 A

**From:**

**Name:** Joseph Bean  
**Company:** Fay Financial  
**Telephone:**  
**Pages:** 7

**RE: FAY SERVICING**

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**Comments/Notes:**

Good Afternoon Attorney Barry S. Miller, Esq.,  
I am following up with your firm in regards to the above case for the debtor: Hany Elazab  
We are the servicers regarding the property located at: 16 Brook Road, Upper Saddle River, NJ 07458

Provided is a copy of your client evaluation letter approval for the Trial Period Plan (TPP) for your review and perusal. Also, the authorization letter provided was not approved because it does not authorize Fay Servicing to speak with your client Hany Elazab. The letter provided authorizes Fay Servicing to speak with Barry S. Miller, Esq. and Jodi Miller, Paralegal on behalf of the client. Please provide an authorization letter authorizing Fay Servicing to speak directly with your client.

Thank you,

Joseph Bean, Jr.  
Bankruptcy Account Manager  
Fay Servicing, LLC  
440 S. LaSalle St., Suite 2000, Chicago, IL 60605  
877-312-3478 toll free  
312.517.0799 direct  
630-282-7539 fax

[www.fayservicing.com](http://www.fayservicing.com)

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**BARRY S. MILLER, ESQ.  
JODI MILLER, PARALEGAL**

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[jmiller@barrysmillerresq.com](mailto:jmiller@barrysmillerresq.com)

May 31, 2018

Via email and fax  
Fay Servicing

Re: Debtor: Hany Elazab  
Property Address: 16 Brook Road, Upper Saddle River, NJ 07458  
Fay Servicing #: [REDACTED] 700

Please accept this letter as a "letter of authorization" per the terms of your 2/27/18 fax that Fay Servicing is authorized to communicate with Barry S. Miller, Esq. and Jodi Miller, Paralegal, on behalf of our client, Hany Elazab to obtain, share, release, discuss, and otherwise provide to and with each other public and non-public personal information contained in or related to the mortgage loan of the Borrower. This information may include (but is not limited to) the name, address, telephone number, social security number, credit score, credit report, income, government monitoring information, loss mitigation application status, workout options, account balances, program eligibility, and payment activity of the Borrower.

Very Truly yours,

  
Barry S. Miller  
BSM/jlm

C: Hany Elazab



August 21, 2018

HANY ELAZAB

Account Number: [REDACTED]

16 BROOK RD  
UPPER SADDLE RIVER, NJ 07458

Property Address: 16 BROOK RD  
UPPER SADDLE RIVER, NEW JERSEY 07458

Dear Homeowner(s):

Thank you for contacting us about your mortgage. Based on a careful review of the information you provided to us, we are offering you an opportunity to enter into a Trial Period Plan under the Fay Servicing Modification Program. This is the first step toward qualifying for more affordable mortgage payments or more manageable terms. It is important that you read this information in its entirety so that you completely understand the actions you need to take to successfully complete the Trial Period Plan to permanently modify your mortgage.

**To Accept This Trial Period Plan Offer**

You must contact us at (800) 495-7166 or in writing at Fay Servicing, LLC, 440 S. LaSalle St., Ste. 2000, Chicago, IL 60605, ATTN: Loss Mitigation, no later than September 4, 2018 to indicate your intent to accept this offer. In addition, you must make your first Trial Period Plan payment by October 1, 2018.

**TIME IS OF THE ESSENCE**

If you fail to make the first Trial Period Plan payment by October 1, 2018 and we do not receive the payment by the last day of the month in which it is due, this offer will be revoked and we may refer your loan to foreclosure, or if your loan has been referred to foreclosure, foreclosure proceedings may continue and a foreclosure sale may occur.

**Make Trial Period Payments**

To successfully complete the Trial Period Plan, you must make the Trial Period Plan payments below.

Payment Due	Payment Amount
October 1, 2018	\$7,532.42
November 1, 2018	\$7,532.42
December 1, 2018	\$7,532.42

Please send your Trial Period Plan payments to:

Fay Servicing, LLC  
3000 Kellway Drive., Ste. 150  
Carrollton, TX 75006  
ATTN: Loss Mitigation

If you have questions regarding this notice please contact us at (800) 495-7166, or contact your Account Manager, JOSEPH BEAN, directly at 312-517-0799.

For a complete list of programs for which you were reviewed for eligibility or were not reviewed for due to a more appropriate option being offered, see Attachment A.

#### Next Steps

- It is important that you thoroughly review the Additional Trial Period Plan Information and Legal Notices attached.

#### This trial offer is contingent on the following:

- Your having provided accurate and complete information.
  - You must ensure the title to your property is without other encumbrances that prohibit a modification and title must otherwise be clear and marketable, as applicable. For example, if there is another lien on your property, the lienholder must agree to subordinate the lien.
  - We must receive each payment in the month in which it is due.
- Once you have successfully made each of the payments above by their due dates, you have submitted two signed copies of your modification agreement, and we have signed the modification agreement, your mortgage will be permanently modified in accordance with the terms of your modification agreement.
- If you miss a payment or do not fulfill any other terms of your Trial Period Plan, this offer will end and your mortgage loan will not be modified. Additionally, we reserve the right to revoke this offer or terminate the plan following your acceptance if we learn of information that would make you ineligible for the Trial Period Plan.

Approximate Terms of the Modification

Interest Rate:	4.000%	Interest Bearing Balance:	\$964,349.74
Principal & Interest:	\$5,485.59	Principal Forbearance:	\$104,464.33
Taxes & Insurance:	\$1,918.90	Principal Forgiveness:	\$ .00
Escrow Shortage:	\$127.93	Amortization Term:	265
PITI:	\$7,532.42	Maturity Term:	265
Mod Effective Date:	1/1/2019	Potential Balloon:	\$ .00

- If you feel you cannot afford the Trial Period Plan payments shown above but want to remain in your home, or if you have decided to leave your home, please contact us at (800) 495-7166 to discuss alternatives to foreclosure.
- Please note that except for your monthly mortgage payment amount during the Trial Period Plan, the terms of your existing note and all mortgage requirements remain in effect and unchanged during the Trial Period Plan.

#### Additional Trial Period Plan Information and Legal Notices

**Any pending foreclosure action or proceedings will remain suspended during the trial period, provided you are complying with the terms of the trial period plan:**

- Any pending foreclosure action or proceeding that has been suspended may be resumed if you fail to comply with the terms of the plan or no longer qualify for a permanent loan modification.
- You agree that we will hold the Trial Period Plan payments in an account until sufficient funds are in the account to pay your oldest delinquent monthly payment. You also agree that we will not pay you interest on the amounts held in the account. If any money is left in this account at the end of the Trial Period Plan and you qualify for a permanent loan modification, those funds will be deducted from amounts that would otherwise be added to your modified principal balance.
- Our acceptance and posting of your payment during the Trial Period Plan will not be deemed a waiver of the acceleration of your loan and related activities, including the right to resume or continue foreclosure if you fail to comply with the terms of the plan, and shall not constitute a cure of your mortgage default unless such payments are sufficient to completely cure the default.

#### If your monthly payment did not include escrows for taxes and insurance, you may now be required to do so:

- You agree that any prior waiver that allowed you to pay directly for taxes and insurance is revoked. You agree that we may establish an escrow account and that you will pay required escrows into that account, unless prohibited by applicable law.
- If you have received a chapter 7 bankruptcy discharge, we agree that, due to the discharge you received in a Chapter 7 bankruptcy proceeding subsequent to the execution of your loan documents, you will not have personal liability on the debt pursuant to this Trial Period Plan.

**Your current loan documents remain in effect; however, you may make the Trial Period Plan payment instead of the payment required under your loan documents:**

- You agree that all terms and provisions of your current mortgage note and mortgage security instrument remain in full force and effect and you will comply with those terms; and that nothing in the Trial Period Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the loan documents.
- We will continue to report the delinquency status of your loan to credit reporting agencies as well as your entry into a Trial Period Plan in accordance with the requirements of the Fair Credit Reporting Act and the Consumer Data Industry Association requirements. Credit scoring companies generally may consider the entry into a plan with reduced payments as an increased credit risk. As a result, entering into a Trial Period Plan may adversely affect your credit score, particularly if you are current on your mortgage or otherwise have a good credit score.



#### Additional Information and Legal Notices

##### **Federally Declared Disaster Area:**

If you are in a Federally Declared Disaster Area, you may have up to 120 days after the disaster area was designated by the federal government to appeal the decision that your loan is not eligible for the program(s). If you believe that you may be in a Federally Declared Disaster Area, please call us at (800) 495-7166.

##### **Federal ECOA Notice:**

Fay Servicing, LLC is required by law to inform you that the Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applications on the basis of race, color, religion, national origin; sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Bureau of Consumer Financial Protection, 1700 G Street N.W., Washington, DC 20552.

Our credit decision was based in whole or in part on information compiled from reports obtained from one or more of the three consumer reporting agencies listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. These reporting agencies played no part in our decision and are unable to supply specific reasons we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than 60 days after you receive this notice. In addition, if you find that information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

**Equifax:** PO Box 740241 Atlanta, GA 30374-0242 (800) 685-1111  
**Experian:** PO Box 9701 Allen, TX 75013-9701 (888) 397-3742  
**TransUnion:** PO Box 2000 Chester, PA 19022-2000 (800) 916-8800

##### **Homeownership Counseling Services:**

Homeownership counseling is available through a variety of nonprofit organizations experienced in homeownership counseling and approved by the Secretary of Housing and Urban Development (HUD). A listing of such organizations may be obtained by calling the HOPE Hotline Number: (888) 995-HOPE. This hotline can help with questions about the program and offers access to free HUD-certified counseling services in a variety of languages.

**Attachment A**

Based on our review of your financial circumstances, the following are programs for which you were reviewed for eligibility or were not reviewed for due to a more appropriate option being offered. You may obtain additional documentation supporting the denial decision upon written request to the Fay Servicing.

**Repayment Plan:**

Based on the income information and documentation provided the current income is insufficient to achieve a payment that would qualify for the program.

**Deferment (Limited):**

The delinquent balance on the mortgage exceeds program guidelines.

**Fay Servicing Modification:**

You were approved for this program.

**Deferment (Large Amount):**

You were not offered this program because you are being offered a loss mitigation program deemed more appropriate based on all information present.

**Fay Servicing Short Sale:**

You were not offered this program because you are being offered a loss mitigation program deemed more appropriate based on all information present.

**Fay Servicing Deed-in-Lieu:**

You were not offered this program because you are being offered a loss mitigation program deemed more appropriate based on all information present.

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